

# NOMINATIONS OF JOHN RAMSEY JOHNSON AND GERALD I. FISHER

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## HEARING

BEFORE THE

### COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTH CONGRESS

SECOND SESSION

ON THE

NOMINATIONS OF JOHN RAMSEY JOHNSON AND GERALD I. FISHER TO  
BE ASSOCIATE JUDGES OF THE SUPERIOR COURT OF THE DISTRICT  
OF COLUMBIA

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SEPTEMBER 13, 2000

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## **NOMINATIONS OF JOHN RAMSEY JOHNSON AND GERALD I. FISHER**

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**WEDNESDAY, SEPTEMBER 13, 2000**

U.S. SENATE,  
COMMITTEE ON GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 9:10 a.m., in room SD-342, Dirksen Senate Office Building, Hon. George Voinovich presiding.

Present: Senator Voinovich.

### **OPENING STATEMENT OF SENATOR VOINOVICH**

Senator VOINOVICH. The hearing will come to order. I would like to welcome everyone here this morning, especially our nominees, Gerald Fisher and John Ramsey Johnson, who have been nominated to serve as Associate Judges for the District of Columbia. Let me state for the record that both of our nominees have been subjected to a very thorough screening process.

They were recommended by the District's Judicial Nomination Committee, subjected to FBI background investigations and subsequently nominated by the President of the United States. Since the nominations were received, the Committee staff has also conducted separate background checks and interviews of both of the nominees.

And I want to say that yesterday I visited with the White House Counsel and looked over the FBI reports and so forth, so I am pretty familiar with your backgrounds, and then our staff has done a lot of work. So I think, for the record, people should know that both of these candidates have been subjected to an enormous amount of scrutiny by not only the White House, but by the Senate, and have gone through all the various screenings that one has to go through, and you all ought to feel very good about the fact that you are here, because if you had not done that well, you would not be here today.

We are privileged to have with us today Congresswoman Eleanor Holmes Norton, who does an outstanding job of representing the District. She has been very conscientious about trying to make sure that we get the very best people on the courts here in the District. Eleanor, it is nice to welcome you here this morning.

### **STATEMENT OF ELEANOR HOLMES NORTON, A DELEGATE IN CONGRESS FROM THE DISTRICT OF COLUMBIA**

Ms. NORTON. Thank you very much, Mr. Chairman. The District very much appreciates that you have moved so expeditiously to hold this hearing, to fill two spots, two places on our local bench.

As you may know, I do not participate in the selection of the local benches. I do U.S. District Court judges, because I regard that as a home-rule matter, but since this is an Article I court, it is always a great pleasure to sponsor and introduce nominees who have completed a thoroughly professional screening process.

We have a wonderful doubleheader here today, with two outstanding nominees. First, let me introduce John Ramsey Johnson. I know that the U.S. Attorney's Office—and I see the United States Attorney here—will miss this mainstay of the U.S. Attorney's Office. He has himself served as interim U.S. Attorney, appointed first by Attorney General Janet Reno, then by the U.S. District Court judges themselves.

He has held the second-highest position in the U.S. Attorney's Office, Acting Principal U.S. Attorney. In that office, as a career U.S. Attorney, Mr. Johnson has done it all. He has, across the board, deep experience in prosecuting everything from local crimes to international terrorism, civil and criminal appeals, and training new assistants. His work in the U.S. Attorney's Office has been excellent preparation to serve on our Superior Court bench.

Despite his busy professional life, Mr. Johnson has managed to be elected to office at his local public school PTA, where his son is in the second grade, and to act as a mentor to youngsters. He is almost a lifelong resident of the city, went to undergraduate school at Georgetown, got his law degree at Antioch Law School, now known as the University of the District of Columbia Law School, and he was a captain in the Air Force. This is an outstanding candidate, we believe, for you to consider, Mr. Chairman.

I would next like to introduce Gerald Fisher, also an excellent candidate who has had a distinguished career in private practice, most recently at Fisher and Hansen. His deep experience comes as a supervising attorney initially at criminal defense clinics which involve five of our six law schools: Georgetown, Howard, George Washington, Catholic, and American. He himself is a specialist in complex criminal and civil litigation. Over 15 years, he has taught evidence, trial practice, and capital punishment jurisprudence at Georgetown Law School as an adjunct professor.

Mr. Fisher is frequently on the faculty for child-advocacy programs around the country. He is a graduate of the College of William and Mary in Virginia, and Catholic University Law School here. He clerked in our own District of Columbia Court of Appeals. I am very pleased to recommend this highly-qualified candidate.

Senator VOINOVICH. Thank you very much. I just would like to say that the fact that I am here should not be interpreted as the fact that this is not very important to the Members of the Senate. I know that several other Members would like to have been here this morning, but they have some conflicts in their schedule. I just want the family to know that this is a big deal. And so we are glad to have all of you here. Mr. Ramsey, would you like to introduce your wife and children?

Mr. JOHNSON. I certainly would, Mr. Chairman. Thank you very much. This is my wife, Monica McGowan, and my daughter, Molly, who is about to turn 12, and my son, John, who is seven. And I also have with me today, if I may mention them, U.S. Attorney

Wilma Lewis and a close colleague of mine, also from the office, Channing Phillips. Thank you.

Senator VOINOVICH. You are going to be missing somebody important in your operation.

Ms. LEWIS. Yes, we will.

Senator VOINOVICH. I am sure you are rejoicing in the fact he is going to have an opportunity to serve in another way. I told the children, "You know, I think you are going to see more of your dad." [Laughter.]

He is going to work hard, but one thing, for the most part, judges do control their schedules, as contrasted to people who are in the Attorney's office—you are always there; aren't you?

Mr. FISHER, would you like to introduce—I know that your law partner is here today, and you are welcome to introduce your friends.

Mr. FISHER. I would like to introduce Mary Kennedy, who is my significant other, my life partner, and next to her is Kurt Hansen, my law partner at Fisher and Hansen. As I indicated to you earlier, if I am fortunate enough to be confirmed, I am the fourth partner that he has had who ascends to the Superior Court bench.

Senator VOINOVICH. He ought to go into business, just advertise. [Laughter.]

We have a tradition here in this Committee that we ask all of our witnesses to go under oath, and if you will both stand, I would like to swear you in. Please raise your right hand and repeat after me. Do you solemnly swear that the testimony you will give the Committee today will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. FISHER. I do.

Mr. JOHNSON. I do.

Senator VOINOVICH. Let the record show that both of our candidates answered in the affirmative. Mr. Johnson, we are pleased to have you here today, and would you like to make any kind of an opening statement?

**TESTIMONY OF JOHN RAMSEY JOHNSON,<sup>1</sup> TO BE AN ASSOCIATE JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA**

Mr. JOHNSON. Only very briefly. Thank you, Mr. Chairman. I wanted to tell you that I am greatly honored to be testifying here today. I wanted to thank the President for nominating me to be an Associate Judge of the Superior Court. I particularly wanted to thank you for holding this hearing and the Committee for moving forward on this. This is really a great honor, and I will be very happy to answer any questions you may have.

Senator VOINOVICH. Mr. Fisher.

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<sup>1</sup> The biographical information of Mr. Johnson appears in the Appendix on page 7.

**TESTIMONY OF GERALD I. FISHER,<sup>1</sup> TO BE AN ASSOCIATE  
JUDGE OF THE SUPERIOR COURT OF THE DISTRICT OF CO-  
LUMBIA**

Mr. FISHER. Thank you, Mr. Chairman. I also share Mr. Johnson's sentiments about being very honored to be here—both being nominated by the President and being allowed to come before this Committee. I just wanted to add my special thanks to Delegate Norton for taking her time out from what I know is a very busy schedule today to come and introduce us.

And I also wanted to thank the Committee staffers, who have really made this process extremely understandable and easier than I otherwise thought it would be. The last point is I am especially happy to be here today with Ramsey Johnson, who is a friend and colleague of 20 years and, in my opinion, as deserving of this position as anybody in the city. Thank you very much.

Senator VOINOVICH. I mentioned earlier that I read your background, and you have been through a series of investigations and staff work. I would be interested for the record to have each one of you respond to why it is that you want to hold this position. Both of you are successful in your own particular fields and I would be interested in knowing why it is that you want to serve on the bench.

Mr. Johnson.

Mr. JOHNSON. Yes, Senator. Thank you. I have, as I think the record indicates, spent essentially my entire life in Washington, D.C., and it is my hometown. Even though I understand it is the Nation's capital and has various members of the diplomatic corps and others here, but I actually live in the house I grew up in, and my wife and I have put an addition on the back, but we are raising our children in the same place where I grew up. They are learning to ride their bicycles on the same sidewalk.

And all of that has given me a connection to this city that I find very rewarding. The Superior Court of the District of Columbia serves the people of the District of Columbia and all their many problems. Usually problems bring people to a courthouse, from family law to difficulties with juveniles and adult crime, and civil cases. It is, to me, looking at it as a lawyer, an important part of the lifeblood of a community.

And I am hopeful that, based on my years of experience and training, and just my years, that I can bring some judgment, perspective and love of this city to the job, and not only would it be, I hope, rewarding for me, but that it would, in fact, benefit the people who live and work here.

Senator VOINOVICH. In Ohio, it is like our Court of Common Pleas, where you really deal with the problems of the people in the area.

Mr. JOHNSON. Exactly.

Senator VOINOVICH. It is not a bad thing to have somebody who lives in the area be a judge on the bench. One of the things we did in our city when I was mayor was that we had a residency requirement and a lot of people hooted and howled over it. It was not retroactive, but for new people, they had to live in the city. It has

<sup>1</sup> The biographical information of Mr. Fisher appears in the Appendix on page 28.



really made a big difference. It really has, because there is a certain sense of commitment to the city because you are a resident of the city, and it is a good dimension and it is great.

Mr. Fisher.

Mr. FISHER. Thank you, Senator. I share a lot of the feelings that Mr. Johnson has, although I have not been here in the city nearly as long. I have lived here over 20 years now. I must confess that I do not leave private practice without some regrets. I enjoy litigation and I enjoy many of the things I do. I guess I have come to the point in my career where there is a certain frustration in being unable to solve and address problems from the position that I am in, and I think being a judge can help you to do that.

Hopefully, I, too, will bring some wisdom and some judgment and some experience and maybe just good old common sense to the job and can do more good for this city than I have thus far been able to do.

Senator VOINOVICH. Well, I do not think enough people in this country have an appreciation about how important our good judges are to our society, and it is nice that both of you are interested in pursuing a seat on the Superior Court.

I have some questions that must be answered. They are mandatory questions and I am going to ask each one of you—I will read the question first and then you can respond to it. First, are you aware of anything in your background that might present a conflict of interest with the duties of the office to which you have been nominated?

Mr. Johnson.

Mr. JOHNSON. No, Mr. Chairman.

Senator VOINOVICH. Mr. Fisher.

Mr. FISHER. No, Mr. Chairman.

Senator VOINOVICH. Do you know any reason, personal or otherwise, that would in any way prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. JOHNSON. No, Mr. Chairman.

Mr. FISHER. No.

Senator VOINOVICH. Do you know of any reason, personal or otherwise, that would in any way prevent you from serving the full term for the office to which you have been nominated?

Mr. JOHNSON. No, Mr. Chairman.

Mr. FISHER. No, Mr. Chairman.

Senator VOINOVICH. Let the record show that the answers to all those questions were no.

Is there anything else that you would like to add?

Mr. JOHNSON. No, sir. Thank you.

Mr. FISHER. I don't believe so.

Senator VOINOVICH. The procedure is that once this hearing is held, then it will go to the Committee as a whole and for review. We will see what we can do to move it along as quickly as we can and hopefully get it done before we get out of here. I know that you are needed in the positions which you are seeking, and I will do what I can to move this along for you, but at this stage of the game here in Congress, it is hard to figure out what is going on. Thank you so much for being here and I am so glad that you were

able to bring your friends, Mr. Fisher, with you, and Mr. Johnson, your family.

Mr. FISHER. Thank you, Senator.

Mr. JOHNSON. Thank you.

Senator VOINOVICH. I wish you good luck in your new career. The hearing is adjourned.

[Whereupon, at 9:26 a.m., the Committee was adjourned.]

## A P P E N D I X

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### QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

#### I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  
**John Ramsey Johnson, J. Ramsey Johnson, Ramsey Johnson**
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  
**U.S.A.**
3. Current office address and telephone number.  
**555 Fourth Street, N.W., Washington, D.C. 20001  
202-307-2339**
4. Date and place of birth.  
**May 23, 1945  
Canton, Ohio**
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).  
**I have been married to Monica McGowan since September 15, 1984. She stays at home with our two children.**
6. Names and ages of children. List occupation and employer's name if appropriate.  
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7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and dates each degree was received. Please list dating back from most recent to earliest.

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 Nominee to D.C. Superior Court  
 Committee on Governmental Affairs

Antioch School of Law, 1973 to 1976, Juris Doctor awarded in May, 1976.

Georgetown University, College of Arts and Sciences, 1963 to 1968, Bachelor of Arts (Classical) Degree, major in Philosophy and minor in Classics, awarded June, 1968.

Georgetown Preparatory School, 1957 to 1963 (Seventh grade through graduation, May, 1963)

8. Employment record. List all jobs held since college, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest.

As I was graduating from Georgetown University, I was employed by the Red Top Cab Company as a cab driver, from September 1967 to May 1968. The company was located at 1010 North Highland Street in Arlington, Virginia.

After graduation from college and before entering the Air Force, I worked as a camp counselor at Camp Shohola in Greeley, Pennsylvania from June to August, 1968.

Having completed ROTC at Georgetown, I served as an officer in the United States Air Force from August 14, 1968 to January 28, 1972. I performed a variety of administrative and training duties. As I was promoted from Second Lieutenant, to First Lieutenant to Captain, I was stationed at Warner Robbins AFB in Georgia, at Charleston AFB in Charleston, South Carolina and at Eighth Air Force Headquarters, Anderson AFB on Guam.

Before attending law school I worked at the Social Security Administration, Office of Economic and Long Range Studies from May, 1973 to September, 1973. At that time it was located at 1875 Connecticut Avenue, N.W., Washington, D.C. I served as a social science research analyst and performed various administrative duties.

I worked at the U.S. Attorney's Office for the District of Columbia, as an unpaid legal clerk while I was in law school from January to March and June to September, 1975, and as a paid legal clerk from March, 1976 to December, 1976. On December 22, 1976, I was sworn in as an Assistant U.S. Attorney and remain in that position to the present.

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9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

**In 1990 I was the recipient of the Harold J. Sullivan Award, presented annually by the Assistant U. S. Attorney's Association to "the Assistant U.S. Attorney who best exemplifies the selfless devotion, personal courage, professional fairness and trial excellence of the late Harold J. Sullivan."**

**During my service in the Air Force I was awarded the Air Force Commendation Medal for securing open housing for Air Force personnel in Charleston, South Carolina**

10. Business relationships. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.

**I am an elected member of the Murch Elementary School Home-School Association (HSA). Murch is our local public school which my daughter attended from 1992 to 1998 and where my son currently is in the first grade.**

**:**

11. Military service. Indicate whether you have served in the US military and, if so, list dates of service, branch of service, rank or rate, serial number, and type of discharge received.

**I served as an officer in the U.S. Air Force from August, 1968 to January, 1972. At the time I left active duty I was a Captain, serial number 578-58-3544FV. I received an honorable discharge.**

12. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

**I am a member of the District of Columbia Bar Association and the Judicial Conference of both the D.C. and Federal Courts. I have never held office.**

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13. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 12. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

As described in my answer to Question 10, above, I am a member of the Murch Home-School Association. It certainly does not now, nor, to my knowledge, has it ever discriminated against anyone based on race, sex or religion. Also, I was a member of the American Civil Liberties Union from 1970 to 1982.

14. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

District of Columbia Court of Appeals, December 21, 1976.

U. S. Court of Appeals for the District of Columbia Circuit, December 29, 1976.

U.S. District Court for the District of Columbia, January 3, 1977.

U. S. Supreme Court, July 14, 1980.

15. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

None.

16. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with three (3) copies of any of these speeches.

None.

17. Legal career.

- (a) Describe chronologically your law practice and experience after graduation from

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law school, including:

- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;

**I was extended an offer to be an Assistant U. S. Attorney while still in my third year of law school, and did not have the opportunity to clerk for a judge.**

- (2) Whether you practiced alone, and if so, the addresses and dates;

**I have spent my entire legal career in the U.S. Attorney's Office and have, therefore, never practiced alone.**

- (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

**I began working for the U. S. Attorney's Office as a law clerk during my third year of law school in March, 1976 and was sworn in as an Assistant U. S. Attorney on December 22, 1976.**

- b. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

**While I have worked in the U. S. Attorney's Office for the past twenty-three years, the nature of my work has varied over the years in substantial measure.**

**From 1976 until 1981, I served as a line Assistant U.S. Attorney in the Appellate and Superior Court Divisions. My appellate work, as described below, consisted in briefing and arguing about a dozen criminal appeals and at least one civil appeal. Depending on the section to which I was assigned, my work in the Superior Court Division involved prosecuting misdemeanor cases, investigating cases before the grand jury and prosecuting felony cases.**

**In 1981, I was appointed Deputy Chief of the Misdemeanor Trial Section where I was responsible, along with the Chief of the Section, for training**

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and supervising the Section's staff. In 1984, I was named Counsel to the U.S. Attorney, and, later that year, appointed Deputy Chief of the Superior Court Division.

In 1986, I joined the Special Prosecutions Section which prosecuted a wide variety of major criminal cases in U.S. District Court. I investigated and prosecuted white collar fraud, public corruption, export violations and international terrorism.

In 1989, with the reorganization of the Criminal Division of U. S. District Court, I was named the chief of the newly-created Transnational and Major Crimes Section, which developed expertise in investigating and prosecuting domestic and international terrorism, export violations and espionage. Later that same year, I was named the Chief of the Superior Court Division where I supervised a staff of about 150 Assistant U. S. Attorneys prosecuting cases in D.C. Superior Court, ranging from misdemeanors to murders.

In 1993, I was appointed interim United States Attorney for the District of Columbia by Attorney General Janet Reno, then by the judges of the U.S. District Court, to serve until Eric H. Holder, Jr. was sworn in as U.S. Attorney about six months later. I then returned to my position as Chief of the Superior Court Division.

In 1995, Eric Holder named me Principal Assistant U.S. Attorney.

In 1998, I was named to my current position of Special Counsel to U.S. Attorney Wilma A. Lewis. I am responsible for overseeing and implementing a wide variety of policy initiatives, primarily involving facilitating partnerships among federal and local law enforcement and federal and city agencies, all directed toward community safety and improving the quality of life of those who live, work and visit in the District of Columbia.

- c. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

While I have not had any clients, as such, I do believe that many of the victims of crime whom we assist in the U.S. Attorney's Office are, in some



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important respects, much like clients in their need for emotional support, information about their case, and practical assistance in coping with their injuries and losses. Along with many others in the U.S. Attorney's Office, I have worked hard to improve our services to, and support of, victims of crime, and the protection of witnesses.

d. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.

During the time I served as a line Assistant in Superior Court from 1977 to 1981, I was in court or before the grand jury almost every day, trying cases and handling routine court proceedings, such as status hearings, guilty pleas and sentencings. During the periods I was a supervisor, I appeared in court only in support of the line prosecutor when some issue had arisen before the court or just to observe the proceedings. As a line prosecutor in U. S. District Court from 1987 to 1989, I appeared in court only occasionally, with the exception of one three week trial before then Chief Judge Aubrey Robinson, which is discussed below in my answer to Question 18.

- (2) What percentage of these appearances was in:

- (a) Federal courts (including Federal courts in D.C.);  
5%
- (b) State courts of record (excluding D.C. courts);  
None.
- (c) D.C. courts (Superior Court and D.C. Court of Appeals only);  
95%
- (d) other courts and administrative bodies.  
None.

- (3) What percentage of your litigation has been:

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(a) civil;  
 1%

(b) criminal.  
 99%

- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.

**I have tried about 90 cases to verdict and in every case save one I have been sole counsel.**

- (5) What percentage of these trials was to

(a) a jury;  
 44 %

(b) the court (include cases decided on motion but tabulate them separately).  
 56% (No cases on motion.)

18. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and telephone number(s) of co-counsel and of the principal counsel for the other parties.

**Because of the number and variety of management positions I have held in the U.S. Attorney's Office, I personally have not litigated many significant cases. Nearly all of the cases I prosecuted through trial were of no particular note, involving routine misdemeanors and felonies. However, I have noted two cases, United States v. Fawaz Yunis, a criminal case, and Rankin v. Civiletti, a civil case.**

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1. United States v. Fawaz Yunis

- (a) I was assigned to the case from approximately the summer of 1987 until the trial and sentencing were concluded in the spring of 1989.
- (b) The case was prosecuted in the U. S. District Court for the District of Columbia.

The Honorable Barrington Parker handled pre-trial matters, and The Honorable Aubrey Robinson presided over the trial and sentencing.

- (c) Co-counsel were Karen Morrisette, U. S. Department of Justice, Fraud Section, Washington, D.C., 202-514-0640; and Jennifer Levy, U.S. Department of Justice, Terrorism and Violent Crime Section, 202-514-1092.

Defense Attorney: Francis D. Carter, 1341 G Street, N.W., Washington, D.C. 20005. 202-393-7330.

This case involved a range of very difficult issues, including the fact that it was the first time the United States had been able to prosecute an act of terrorism which had taken place overseas, based in part on a 1984 law which extended the reach of U.S. law enforcement.

Fawaz Yunis was indicted for hijacking a Royal Jordanian airliner in June of 1985, with several American citizens among the passengers. The plane was scheduled to fly from Beirut, Lebanon to Amman, Jordan. Fortunately, even though the hijacking lasted 30 hours as the plane was forced to fly to Italy and around the Middle East, no one was physically injured.

Yunis, the leader of a group of Amal militia, asserted as a defense at trial that he had been acting in obedience to military orders. Many legal issues arose from the fact that all of the events took place in the Middle East in a swirl of classified information, almost all of which the government sought to protect under the Classified Information Procedures Act. Several of the witnesses had to be brought to this country from several Middle-Eastern countries and placed in the U. S. Marshal's Witness Protection Program.

In addition, the government sought to use a confession obtained from Mr. Yunis,

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while he was being transported aboard a U. S. Navy vessel in the Mediterranean Sea. Securely ensconced in a small plane, Yunis was launched off the deck of a U. S. aircraft carrier all the way to Andrews Air Force Base. Both the issue of the admissibility of the confession and the use of the Classified Information Procedures Act occasioned two pretrial, interlocutory appeals to the D. C. Circuit, with the government prevailing in both. Yunis was convicted after a three week trial and is currently serving his sentence. The legal complexities involved in the case are reflected in the many, frequently cited, reported opinions emanating therefrom.

Judge Barrington Parker presided over the case until illness intervened just before a jury was to be picked. Chief Judge Aubrey Robinson then stepped in to assist with several remaining pre-trial matters and to preside over the trial and sentencing. Along with two attorneys from the Department of Justice, I prosecuted the case during the investigation and at trial, but did not handle the appeals.

The pertinent citations are as follows:

U. S. v. Fawaz Yunis, 924 F.2d 1086, 288 U.S. App. D.C. 129 (1991);  
U. S. v. Fawaz Yunis, 867 F.2d 617, 276 U.S. App. D.C. 1 (1989);  
U. S. v. Fawaz Yunis, 705 F. Supp. 33 (D.D.C. 1989);  
U. S. v. Fawaz Yunis, 859 F.2d 953, 273 U.S. App. D.C. 290 (1988);  
U. S. v. Fawaz Yunis, 1988 WL 16302 (D.D.C. 1988);  
U. S. v. Fawaz Yunis, 681 F. Supp. 909 (D.D.C. 1988);  
U. S. v. Fawaz Yunis, 681 F. Supp. 891 (D.D.C. 1988);  
U. S. v. Fawaz Yunis, 681 F. Supp. 896 (D.D.C. 1988).

2. Rankin v. Civiletti, No. 79-1480, U.S. Court of Appeals for the District of Columbia Circuit (1980) (not reported).

I mention this case, not so much because of its legal significance, but because it represented early in my career as an Assistant U.S. Attorney the opportunity to exercise discretion in a manner I believed both wise and fair.

- (a) I handled the case from February to about April or May, 1980.
- (b) The case was before the United States Court of Appeals for the D.C.

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Circuit, which granted the request for a remand and, therefore, did not need to render a decision.

- (c) Plaintiff's counsel was William J. Stone of the American Federation of Government Employees, AFL-CIO, 1325 Massachusetts Avenue, N. W. Washington, D. C. 20005.

In February of 1980, not long after I was assigned to the Appellate Division of the U.S. Attorney's Office, I was asked to brief and argue the case of Rankin v. Civiletti, a civil case in which the U. S. District Court had upheld the termination of the plaintiff's employment as a Deputy U.S. Marshal on the grounds that he had threatened some protected witnesses with a gun. Because I knew little about employment law, I had to start at "square one," steeping myself in the area. In doing so, I discovered that the plaintiff had, in fact, been terminated wrongly because he had not been given an opportunity, as required by statute, to address his problem with the abuse of alcohol. Although this argument had been raised neither before the U.S. Merit Systems Protection Board, nor the District Court, nor, of course, on appeal, based on my analysis and recommendation, the U. S. Attorney's Office decided that the law required that the matter be remanded to the U. S. District Court for further proceedings. The Circuit granted our request.

- 19. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

#### **D.C. Advisory Commission on Sentencing**

As the representative of U.S. Attorney Wilma A. Lewis, I currently serve on the District of Columbia Advisory Commission on Sentencing, created by the D.C. City Council to provide recommendations on further changes to be made to the D.C. Code in preparation for a new sentencing law, passed by congress, which will apply to almost all serious criminal violations of the Code, committed after August 5, 2000.

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The Commission, chaired by Judge Frederick Weisberg, includes two other members of the judiciary, as well as members of the defense bar. Other members include Councilmember Harold Brazil and Corporation Counsel Robert Rigsby.

We have submitted two reports to the City Council, an initial report describing sentencing practices in Superior Court over the last five years, and a second which makes a variety of recommendations for changes to the D. C. Code.

Prior to my service on the Advisory Commission, I also served on the Truth-in-Sentencing Commission, created by Congress and chaired by Deputy Attorney General Eric H. Holder, Jr. The TIS commission, as it came to be known, was charged with making specific legislative proposals to the City Council to implement determinate sentencing in the District of Columbia. Any recommendations had to be approved by at least six out of seven of the commissioners. We succeeded in submitting a comprehensive package of recommendations for legislative change, taking an approach as deferential as possible to home rule, though fully compliant with federal law.

#### Criminal Justice Coordinating Council

I have contributed substantially to the creation, and on-going work, of the Criminal Justice Coordinating Council, the primary objective of which is to bring together all agency components of the D.C. criminal justice system -- the court, federal and local agencies -- under the leadership of the Mayor, both to solve immediate problems and to implement a collective vision for the future. This is a true collaborative effort which focuses on such priorities as formulating a comprehensive drug strategy including both law enforcement and demand reduction through treatment; the efficient and effective management of resources in case adjudication; and improvements in the juvenile justice system. We are also focusing on the development of better-run halfway houses, viewed in the overall context of a seamless array of sophisticated options for the pre-trial release of defendants. I have been working in partnership with the court, the defense bar, the city government, including the Metropolitan Police Department, and federal agencies such as Court Services and Offender

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Supervision.

### Community prosecution

As Chief of the Superior Court Division, then as Principal Assistant U. S. Attorney, I worked closely with U.S. Attorney Eric Holder, Jr., to bring community prosecution to our office, both in concept and in organizational implementation. The concept builds on that of community policing and aims toward community justice. This approach orients much of the criminal justice system to the needs and priorities of the people who live in individual neighborhoods. It moves all of us, police, prosecutors and the courts, away from simply being case processors who react to crime, toward focusing the power and resources we have been given to prevent crime (and the conditions that breed it), to make the city a better place to live, work and raise children. Under the leadership of Wilma Lewis, we have moved forward to reshape the organizational structure of the U.S. Attorney's office around these core concepts.

20. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide three (3) copies of all opinions you wrote during such service as a judge.

**I have never held judicial office.**

- a. List all court decisions you have made which were reversed or otherwise criticized on appeal

21. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

**In May of 1984, I applied to be an Associate Judge on the Superior Court of the District of Columbia, was interviewed by the Judicial Nomination Commission, but not selected.**

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22. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or sought as a candidate or applicant.

None.

- b. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

None.

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last ten (10) years.

None.

23. Have you ever been investigated, arrested, charged, held or convicted (include pleas of nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, regulation, or ordinance other than for a minor traffic offense?

No.

24. Have you or any business of which you are or were an officer ever been a party or otherwise involved as a party in any other legal or administrative proceedings. If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a coconspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

By letter dated November 12, 1999, I received notification that I was confirmed as a member of the plaintiff class in Doe v. United States, No 98-896C (Fed.Cl.). This is a class action case in which the Department of Justice is being sued for failure to pay DOJ attorneys for work accomplished on overtime. I have had no active involvement other than opting into the class.



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In about 1979, as an Assistant U.S. Attorney, I was called to testify in a murder trial by a fellow Assistant U.S. Attorney who was prosecuting the murder case. My testimony was to the effect that the defendant in the murder trial had been present in my office, for a witness conference in an unrelated case, on a date and at a time when the defendant had just testified he had been out of the city. In other words, I was called as a rebuttal witness for the government, to undermine the defendant's alibi.

In about 1993, when I was serving as the Chief of the Superior Court Division of the U.S. Attorney's Office, I was interviewed by an arbitrator assigned to decide a personnel action initiated by an administrative supervisor in that Division. The personnel action involved a notice of termination directed to an employee of the Superior Court Division for conduct on the job. At that time the Superior Court Division had about 175 employees. As best I can recall, I was asked whether I approved of the recommended action and I did so. Because the employee was a member of the bargaining unit of the union which represents certain U.S. Attorney's Office support personnel, an arbitrator was assigned pursuant to the union agreement. When I was interviewed, I explained to the arbitrator why I agreed with the recommended personnel action and believed that the employee's conduct was entirely inappropriate and deserving of termination. In essence, the conduct in question involved the employee's refusal to stop speaking with and passing a note to a prisoner, despite having been ordered to do so repeatedly by a Deputy U.S. Marshal who quickly became very concerned about security because he was charged with guarding the prisoner who was waiting to testify before a grand jury. The employee was apparently attempting to provide the prisoner religious guidance. The arbitrator ruled that termination was too extreme a penalty. The matter was ultimately resolved through negotiation with the employee, but I had no further involvement.

On May 11, 1978, I was divorced from my first wife, Barbara Lea Santry, in a domestic relations proceeding in the Superior Court of the District of Columbia. The matter was uncontested.

25. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

I have never been disciplined or cited for a breach of ethics or unprofessional

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conduct.

To my knowledge there has been only one instance in which anyone has complained about my conduct. The complaint was made in 1993, during the time I was serving as interim United States Attorney, by Robert W. Wildberger, Jr., a defendant in a criminal investigation who was acting pro se. He complained to the U.S. District Court Committee on Grievances of the United States District Court for the District of Columbia. I have never been informed of the details of the complaint; however, I do know that the Committee concluded the complaint was meritless. By letter dated March 8, 1994, LeAnn Flynn Hall, clerk, on behalf of Earl J. Silbert, Chair of the Committee on Grievances, informed Mr. Wilberger that the Committee had "concluded that neither further investigation nor action by this Committee is warranted at this time. The Committee further concluded that the complaint is "considered closed by the Committee as without merit."

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes. My present employment with the Office of the United States Attorney for the District of Columbia, of course, would need to be severed. Other than my current employment, I have no connections with any business firms, associations or organizations.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

I have no such arrangements or agreements.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relation, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an

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agent, that could in any way constitute or result in a possible conflict of interest.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy.

On August 4, 1994, I testified before the House Subcommittee on Crime and Criminal Justice, concerning the problem of witness intimidation. I have also testified before the District of Columbia City Council on several occasions concerning various local criminal justice initiatives. For example, along with the U.S. Attorney, I testified on May 11, 2000, concerning a legislative proposal submitted by the D.C. Public Defender Service relating to changes to the D.C. Code on sentencing. I testified on February 27, 1998 concerning the Drug-Related Nuisance Abatement Act of 1998, which was designed to help eliminate crack houses and similar drug nuisances. While I do not recall other specific topics and dates of previous testimony, I do recall that, perhaps in 1995, I testified in support of increasing the penalty for the distribution of marijuana and against the total elimination of mandatory penalties for distribution of other drugs by preserving lower mandatory penalties.

I am able to say that all of my on-going contacts with the City Council have been for the purpose of advancing the policies and legislative interests of the U.S. Attorney's Office.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

I have no such plans, commitments or agreements.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I am unaware of any potential conflicts of interest; however, should a potential conflict arise, I will resolve it by close adherence to the Code of Judicial Conduct of the District of Columbia.

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8. If confirmed, do you expect to serve out your full term?  
Yes.

### III. FINANCIAL DATA

Financial Data is maintained on file with the Committee on Governmental Affairs

#### IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501(b), as amended.

1. Are you a citizen of the United States?  
Yes.
2. Are you a member of the bar of the District of Columbia?

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Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years? Please provide the date you were admitted to practice in the District of Columbia.

Yes. I was admitted to practice in the District of Columbia on December 22, 1976.

4. If the answer to Question 3 is "no"--
  - a. Are you a professor of law in a law school in the District of Columbia?
  - b. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
  - c. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
  - d. Upon what grounds is that eligibility based?
5. Are you a *bona fide* resident of the District of Columbia?

Yes.

6. Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.

I live in the District of Columbia at 3731 Appleton Street, N.W., in the house in which I grew up. Except for the period 1964 to 1972 when I lived on or near campus while I attended Georgetown University and when I was on active duty in the Air Force, I have lived at that address since 1948.

7. Have you maintained an actual place of abode in such area for at least five (5) years?

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Yes.

8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?

No.

9. Have you been a member of either of these Commissions within the last 12 months?

No.

**AFFIDAVIT**

John Ramsey Johnson being duly sworn, hereby states that he has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his knowledge, current, accurate, and complete.

SUBSCRIBED and SWORN TO before me this 24th day of May, 2000.

Notary Public

JAY D. FARRIS  
 Notary Public, District of Columbia  
 My Commission Expires July 31, 2003

QUESTIONNAIRE FOR NOMINEES TO THE DISTRICT OF COLUMBIA COURTS  
COMMITTEE ON GOVERNMENTAL AFFAIRS, UNITED STATES SENATE

I. BIOGRAPHICAL AND PROFESSIONAL INFORMATION

1. Full name (include any former names used).  

Gerald Ira Fisher  
Gerald Ira Slivka (name at birth; changed to Fisher when I was formally adopted by my step-father.
2. Citizenship (if you are a naturalized U.S. citizen, please provide proof of your naturalization).  

U.S.
3. Current office address and telephone number.  

Fisher & Hansen, P.C.  
419 Seventh Street, N.W., Suite 201  
Washington, D.C. 20004  
(202) 638-6700 ext. 103
4. Date and place of birth.  

July 14, 1950, Newport News, Virginia
5. Marital status (if married, include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).
6. Names and ages of children. List occupation and employer's name if appropriate.  

N/A
7. Education. List secondary school(s), college(s), law school(s), and any other institutions of higher education attended; list dates of attendance, degree received, and dates each degree was received. Please list dating back from most recent to earliest.



<p>Columbus School of Law Catholic University Washington, D.C. J.D. Degree, 1978</p> <p>College of William &amp; Mary Williamsburg, Virginia B.A. Degree (History) 1972</p> <p>Newport News High School Newport News, Virginia Graduated 1968</p>
---

8. Employment record. List all jobs held since college, including the dates of employment, job title or description of job, and name and address of employer. Please list dating back from most recent to earliest.

Partner & President, Fisher & Hansen, P.C.  
(Previously Fisher, Morin & Kagan-Kans)  
419 Seventh Street, N.W., Suite 201  
Washington, D.C. 20004, (202) 638-6700  
1985-Present

Supervising Attorney, D.C. Law Students in Court  
806 Seventh Street, N.W., Suite 300  
Washington, D.C. 20001, (202) 638-4798  
June 1979-May 1995

Judicial Clerk to Hon. J. Walter Yeagley  
Associate Judge, District of Columbia Court of Appeals  
500 Indiana Avenue, N.W., Sixth Floor  
Washington, D.C. 20001, (202) 879-2701  
August 1978-June 1979

Law Clerk, Kadish & Boraks  
(Street Address Unknown - law firm no longer in existence)  
Washington, D.C.  
March 1978-August 1978

Student Attorney, D.C. Law Students in Court  
806 Seventh Street, N.W., Suite 300  
Washington, D.C. 20001, (202) 638-4798  
June 1978-December 1978

Student Intern, Center for National Policy Review  
Columbus School of Law, Catholic University  
Washington, D.C.  
June 1977-December 1977

Personnel Analyst, Arlington County, Virginia Government  
Arlington, Virginia  
September 1973-May 1977

Professional Basketball Player, Hapoel Jerusalem Team  
Jerusalem, Israel  
August 1972-June 1973

9. Honors and awards. List any scholarships, fellowships, honorary degrees, academic or professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

<p>Professional</p> <p>Member, District of Columbia Criminal Jury Instructions Committee (1984-1986)</p> <p>Delegate, District of Columbia Judicial Conference (1988-2000)</p> <p>Barrister, William B. Bryant Inn of the American Inns of Court (1989-91)</p> <p>Member of Consulting Team assessing costs of Federal Defender Services Program (1997-98)</p> <p>Delegate, District of Columbia Circuit Judicial Conference (2000)</p> <p>Law School</p> <p>Law Review</p> <p>Co-Winner, Sutherland Moot Court Competition</p> <p>Selected for National Moot Court Team</p> <p>College</p> <p>Deans List</p> <p>Varsity Basketball (Co-Captain)</p> <p>Academic Scholarship Recipient</p> <p>High School</p> <p>National Honor Society</p> <p>Member, "H-Q" High School Academic Competition Team</p> <p>Varsity Basketball (All American, All State, All Regional, All District selection) (Co-Captain)</p>
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10. Business relationships. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, or educational or other institution.
- |   |
|---|
| President/Partner, Fisher & Hansen, P.C. (Current law firm) |
|---|
11. Military service. Indicate whether you have served in the US military and, if so, list dates of service, branch of service, rank or rate, serial number, and type of discharge received.
- |     |
|-----|
| N/A |
|-----|
12. Bar associations. List all bar associations, legal or judicial-related committees, conferences, or organizations of which you are or have ever been a member, and provide titles and dates of any offices which you have held in such groups.

American Bar Association & Section of Criminal Justice  
 District of Columbia Bar Section on Criminal Law & Individual Rights (current)  
 Virginia State Bar Criminal Law Section (current)  
 National Association of Criminal Defense Attorneys (1988-1993)  
 Barrister, William B. Bryant Inn of the American Inns of Court (1989-91)  
 Delegate, District of Columbia Judicial Conference (1988-2000)  
 Delegate, District of Columbia Circuit Judicial Conference (2000)

13. Other memberships. List all memberships and offices currently and formerly held in professional, business, fraternal, scholarly, civic, public, charitable, or other organizations, other than those listed in response to Question 12. Please indicate whether any of these organizations formerly discriminated or currently discriminates on the basis of race, sex, or religion.

N/A

14. Court admissions. List all courts in which you have been admitted to practice, with dates of admission and lapses in admission if any such memberships have lapsed. Please explain the reason for any lapse in membership. Please provide the same information for any administrative bodies which require special admission to practice.

District of Columbia Bar (1979)  
 Bar of the State of Maryland (1984)  
 Bar of the Commonwealth of Virginia (1978)  
 United States Supreme Court Bar (1982)  
 United States District Court for the District of Maryland (1988)  
 United States District Court for the Eastern District of Virginia (1987)  
 United States District Court for the District of Columbia (1979)  
 United States Courts of Appeals for the District of Columbia (1985)  
 United States Courts of Appeals for the Fourth Circuit (1993)  
 United States Courts of Appeals for the Ninth Circuit (1989)(lapsed)  
 United States Courts of Appeals for the Eleventh Circuit (1985)(lapsed)

15. Published writings. List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited.

Casenote, *United States v. Board of School Commissioners*, 26 Cath.U.L.Rev. 875 (Fall 1977)  
 Co-Author, Criminal Practice Chapter of the District of Columbia Practice Manual (1989)  
 Criminal Practice Trial Manual, Various Chapters (1982-1988)  
 Principle Author, Criminal Practice in the District of Columbia, 8-part lecture series for District of Columbia Practitioners (1986-7)

16. Speeches. List the titles of any formal speeches you have delivered during the last five (5) years and the date and place where they were delivered. Please provide the Committee with three (3) copies of any of these speeches.

N/A

17. Legal career.

- a. Describe chronologically your law practice and experience after graduation from law school, including:
- (1) Whether you served as a law clerk to a judge, and if so, the name of the judge, the court, and the dates of your clerkship;
  - (2) Whether you practiced alone, and if so, the addresses and dates;
  - (3) The dates, names, and address of law firms, companies, or governmental agencies with which you have been employed.

Law Clerk, Kadish & Boraks (March 1978-August 1978)

Law firm no longer exists; address unknown

Current telephone number of Robert Boraks - (202) 965-7880

Judicial Clerk to Associate Judge J. Walter Yeagley, District of Columbia Court of Appeals (August 1978-June 1979)

Judge Yeagley is deceased

Address of Court is:

500 Indiana Ave., N.W., Sixth Floor

Washington, D.C. 20001

(202) 879-2701

Supervising Attorney, Criminal Division, D.C. Law Students in Court (full-time June 1979-September 1984; part-time September 1984-June 1995)

Current address:

806 Seventh Street, N.W., Suite 300

Washington, D.C. 20001

(202) 638-4798

Ann Marie Hay, Director

Partner, Fisher & Hansen, P.C. (previously Fisher & Morin and Fisher, Morin & Kagan-Kans, P.C.) (1985-Present)

Address:

419 Seventh Street, N.W., Suite 201

Washington, D.C. 20004

(202) 638-6700

Adjunct Professor, Georgetown University Law Center (1983-present)

Address:

600 New Jersey Avenue, N.W.

Washington, D.C. 20001

Dean Judy Areen

(202) 662-9500

- b. Describe the general character of your law practice, dividing it into periods with dates if its character has changed over the years.

After completing my judicial clerkship in June 1979, I became a supervisor with the Criminal Division of the D.C. Law Students in Court Program. In that capacity, I taught criminal law and procedure, evidence, and trial practice skills to third-year law students, then supervised their work in the representation of misdemeanor defendants in the District of Columbia Superior Court. Occasionally, I personally took on court-appointed or private criminal cases.

In 1985, I became a part-time supervisor with Law Students in Court and, with Robert E. Morin, began my own law practice on a part-time basis. By 1986, the practice had become my primary job, though I continued my part-time work with Law Students in Court for several years, but no longer served as a day-to-day supervisor. At Fisher & Morin (later Fisher, Morin & Kagan-Kans) I became involved in more complex criminal cases, including white-collar and capital cases, and also began to take on complex civil cases, including those involving major personal injuries and medical malpractice. My practice today primarily involves complex civil and criminal cases.

- c. Describe your typical former clients and describe the areas of practice, if any, in which you have specialized.

I cannot say that I have had a typical client. I have represented a broad range of clients – some indigent, some wealthy, many in between – in a wide gamut of criminal cases – from drunk in public/disorderly conduct charges to charges of capital murder to charges white-collar fraud and tax evasion – and civil cases dealing with personal injury and medical malpractice, as well as other miscellaneous civil matters. I have also litigated in excess of forty appeals since I have been in practice. My specialization is complex litigation, the bulk of which has been in the area of criminal defense.

- d. Describe the general nature of your litigation experience, including:

- (1) Whether you have appeared in court frequently, occasionally, or not at all. If the frequency of your court appearances has varied over time, please describe in detail each such variance and give applicable dates.
- (2) What percentage of these appearances was in:
  - (a) Federal courts (including Federal courts in D.C.);
  - (b) State courts of record (excluding D.C. courts);
  - (c) D.C. courts (Superior Court and D.C. Court of Appeals only);
  - (d) other courts and administrative bodies.

- (3) What percentage of your litigation has been:
  - (a) civil;
  - (b) criminal.
  
- (4) What is the total number of cases in courts of record you tried to verdict or judgment (rather than settled or resolved, but may include cases decided on motion if they are tabulated separately). Indicate whether you were sole counsel, lead counsel, or associate counsel in these cases.
  
- (5) What percentage of these trials was to
  - (a) a jury;
  - (b) the court (include cases decided on motion but tabulate them separately).



My specialization is litigation, and I appear in court – in the state and federal courts of D.C., Virginia, Maryland and other jurisdictions – on a regular basis. Though I am not in the courtroom as much as I was in the past – which was almost daily – that is because the nature of the cases I now do is more complex and requires fewer court appearances.

Percentage of court appearances (last five years):

Federal – 50%  
 State courts of record – 15-20%  
 D.C. Courts – 25-30%  
 Other courts and administrative bodies – 5-10%

Percentage of litigation

Civil – 10-15%  
 Criminal – 85-90%

Total number of cases tried to verdict:

I don't have an exact number, but a fair approximation would be 80-100. Of those, approximately 40-50% would be co-counseled cases, where I was either the lead or the supervising attorney. The remaining 50-60% I was sole counsel.

Percentage of trial to

Jury – approx. 75%  
 The court – approx. 25%

18. Describe the five (5) most significant litigated matters which you personally handled. Provide citations, if the cases were reported, or the docket number and date if unreported. Give a capsule summary of the substance of each case and a succinct statement of what you believe was of particular significance about the case. Identify the party/parties you represented and describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case, (a) the date of representation; (b) the court and the name of the judge or judges before whom the case was litigated; and (c) the name(s) and address(es) and telephone number(s) of co-counsel and of the principal counsel for the other parties.

United States v. Hollingsworth, 531 A.2d 933 (1987) – Won reversal of robbery conviction due to refusal of trial court to permit defense presentation of non-identification evidence in court. Case is cited for right of defense to present evidence. The Chief of the Appellate Division of the U.S. Attorney's Office, John Fisher (514-7088), was involved with the case. Hon. John Terry (879-2780) wrote the opinion.

Godfrey v. Kemp, 836 F.2d 1557 (11<sup>th</sup> Cir. 1988) – Affirmed grant of habeas corpus relief in Godfrey v. Francis, 613 F. Supp. 737 (N.D. GA. 1985), due to violation of double jeopardy and improper jury instruction regarding presumed intent. My co-counsel was Prof. Ellen Kreitzberg (408-554-4724). The attorney who represented the State of Georgia was Assistant Attorney General Mary Beth Westmoreland. The United States District Judge was the Honorable Harold L. Murphy. Judge Godbold wrote the opinion for the Eleventh Circuit.

In re: O.M., 565 A.2d 573 (D.C. 1989) – Challenged propriety of extradition of juveniles from District of Columbia to jurisdiction that prosecuted juveniles as adult for capital crimes if juvenile over the age of 13. Client was eventually returned to requesting jurisdiction but charges were later dismissed. The chief of the Appellate Division of the D.C. Corporation Counsel's Office, Charles Reischel (727-6001), was involved in the appeal. Hon. Stephen Eilperin (879-1566) presided over the case in D.C. Superior Court. Judge Terry wrote the opinion.

Allen v. Colley, et al., CL 95-0531 (Alex., VA Cir. Ct.) – Obtained eve-of-trial settlement in Virginia for psychologist's engaging in sexual relations with patient in violation of professional ethics and standards of care. The psychologist was represented by the law firm of Jordan Coyne and Savits; the medical group for whom the psychologist worked was represented by the law firm of Hunton & Williams. Co-counsel was David Kagan-Kans (942-4711). Only opposing counsel for whom I have a current phone number is Hon. Barry Poretz (703-299-2119).

United States v. Eugene Jenkins: Mr. Jenkins and two co-defendants were charged with first-degree murder. Mr. Jenkins claimed self-defense but was convicted at initial trial. While the jury was deliberating we filed a motion for mistrial due to jury improprieties. After the verdicts, the presiding judge, the Honorable Reggie Walton (879-1815), granted a new trial. At the retrial, Mr. Jenkins was acquitted of all but weapons possession charges. Counsel for the co-defendants were Michele Roberts (546-1500) and the Hon. Russell Canan (879-1952). The two prosecutors were AUSAs Ronald Dixon (514-7298) and Jay Agee (ret.).

19. Describe the most significant legal activities you have pursued, including significant litigation which did not proceed to trial or legal matters that did not involve litigation. Describe the nature of your participation in each instance described, but you may omit any information protected by the attorney-client privilege (unless the privilege has been waived).

Most of my work has involved litigation and it is from those cases that I have chosen the five cases listed above. The other most significant legal activity with which I am, and have been, involved is teaching, both law students and lawyers. After a judicial clerkship, I began my career as a supervising attorney with a legal clinic, D.C. Law Students in Court in 1979. A sizeable portion of that work involved teaching criminal law and procedure, evidence, and trial techniques to the student attorneys. In 1985, I also became an adjunct professor at Georgetown University Law Center and continue to teach there today. At Georgetown I have taught classes in trial techniques (civil and criminal), capital punishment and the judicial process, and evidence. Since 1980, I have also regularly presented lectures and mini-courses on criminal law and trial techniques to practicing attorneys in the District of Columbia and other jurisdictions. I have also served on the faculties at the Harvard University Law School's Trial Advocacy Workshop and the University of Santa Clara Law School's Death Penalty College. I have found the teaching of law students and attorneys to be one of the most, if not the most, satisfying part of my legal career.

20. Have you ever held judicial office? If so, please give the details of such service, including the court(s) on which you served, whether you were elected or appointed, the dates of your service, and a description of the jurisdiction of the court. Please provide three (3) copies of all opinions you wrote during such service as a judge.

N/A

- a. List all court decisions you have made which were reversed or otherwise criticized on appeal.

N/A

21. Have you ever been a candidate for elective, judicial, or any other public office? If so, please give the details, including the date(s) of the election, the office(s) sought, and the results of the election(s).

N/A

22. Political activities and affiliations.

- a. List all public offices, either elected or appointed, which you have held or

sought as a candidate or applicant.

N/A

- b. List all memberships and offices held in and services rendered to any political party or election committee during the last ten (10) years.

N/A

- c. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity during the last ten (10) years.

1998 joint donation (with Mary Kennedy) of \$250.00 to D.C. City Councilman Kevin Chavous, who was a candidate for Mayor of the District of Columbia.

23. Have you ever been investigated, arrested, charged, held or convicted (include pleas of nolo contendere) by federal, State, local, or other law enforcement authorities for violations of any federal, State, county, or municipal law, regulation, or ordinance other than for a minor traffic offense?

No.

24. Have you or any business of which you are or were a officer ever been a party or otherwise involved as a party in any other legal or administrative proceedings. If so, give the particulars. Do not list any proceedings in which you were merely a guardian ad litem or stakeholder. Include all proceedings in which you were a party in interest, a material witness, were named as a coconspirator or co-respondent, and list any grand jury investigation in which you appeared as a witness.

In 1987-88, I and my former partner represented an individual named Harvey Hudson, who was charged with multiple crimes relating to his repeatedly having sexual intercourse with his step-daughter. Mr. Hudson acknowledged his conduct but insisted that he was married to his step-daughter and that God had commanded him to do so because she, unlike his wife, was a virgin. At trial, we presented an insanity defense and Mr. Hudson testified, against the advice of myself and Mr. Kagan-Kans. He was convicted on all charges. Before sentencing, Mr. Hudson filed a *pro se* motion with the trial judge, the Honorable Reggie Walton, claiming that I and Mr. Kagan-Kans had been ineffective in our representation. Consequently, Judge Walton relieved Mr. Kagan-Kans and me of our appointments and appointed new counsel, William Seals, to represent Mr. Hudson at sentencing and in the ineffective assistance of counsel motion. Mr. Seals also later represented Mr. Hudson in his appeal. Judge Walton denied the ineffective assistance of counsel motion and imposed a substantial sentence on Mr. Hudson.

Approximately two years later, in 1990, Mr. Hudson, again acting *pro se*, sued me, Mr. Kagan-Kans, Mr. Seals, and Mr. Hudson's wife's attorney (Michele Roberts) in federal court, alleging that we had conspired with the United States Attorney's Office to bring about his conviction and sentence. That suit was initially dismissed, then reinstated on appeal. Later, the suit was dismissed with prejudice. The district court caption of the case is Harvey Hudson v. David Kagan-Kans, et al., Civ. Action No. 90-2986 (D.D.C.).

Recently, my law firm and my law partner, Curt Hansen, were named as third-party defendants in a case which began as a divorce proceeding between the firm's client (an 85-year-old man suffering from dementia) and the client's wife (who was in her late 70s), but evolved into cross-complaints for personal injury and property damage. The allegation against Mr. Hansen and the firm in the third-party complaint, which was made late in the proceedings, was that earlier in the litigation Mr. Hansen and, hence, the firm, had wrongfully disclosed the substance of mediation proceedings in which the parties had engaged. At trial, the presiding judge, the Honorable Herbert Dixon, dismissed the claim and made factual findings that contradicted the allegations. The D.C. Superior Court case caption is Forest v. Forest, CA-7306-98.

25. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, bar or professional association, disciplinary committee, or other professional group? If so, please provide the details.

In 1994 or 1995, shortly after Mr. Hansen became a partner in the firm, he received a settlement check on behalf of a client. Because the client was leaving the country before the check would clear, he asked Mr. Hansen to write him a check from our trust account for his portion of the settlement and to post-date that check so that he could have someone deposit it while he was gone. Mr. Hansen told our then-office manager to deposit the settlement check, and then he wrote the client a post-dated check from our trust account for the client's share of the settlement. For unknown reasons, the office manager delayed depositing the settlement check so that there were insufficient funds in the trust (IOLTA) account when the client presented his check for payment. The error was immediately corrected by Mr. Hansen and my then-partner, Robert E. Morin, who handled the firm's finances. I was unaware that the problem had occurred until I received an inquiry from the Bar in my name several months later. I was informed by the then-Bar Counsel that the inquiry was in my name because I was the president of the corporation. The matter was resolved by an informal admonition. I wrote to Bar Counsel asking that the admonition be in the name of the law firm rather than me personally, since I had no knowledge or involvement in the matter, but he informed me that it had to be in the name of an individual and as the president of the corporation/firm I was responsible for the error.

## II. POTENTIAL CONFLICTS OF INTEREST

1. Will you sever all connections with your present employer(s), business firm(s), business association(s), or business organization(s) if you are confirmed?

Yes, except that it is my intention to continue teaching as an adjunct professor at the Georgetown University Law Center, unless that constitutes a violation of judicial ethics.

2. Describe all financial arrangements, deferred compensation agreements, or other continuing dealings with your law firm, business associates, or clients.

Depending on when I depart from my law firm, there are a substantial number of accounts receivable from clients for whom I performed all or most of the legal services. It is my intention to reach an agreement with my partner as to a method for calculating and obtaining my share of those payments. There may also be sums owed to me as contributions to our 401K retirement plan. Finally, should Mr. Hansen decide to disband the firm, there may be payments due relating to personal property and other miscellaneous matters.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest.

None.

4. Describe any business relation, dealing, or financial transaction which you have had in the last ten (10) years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest.

None.

5. Describe any activity during the last ten (10) years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of legislation or affecting the administration and execution of law or public policy.

None.

6. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service as a judge? If so, explain.

None, except for the teaching situation with the Georgetown University Law Center described above.

7. Explain how you will resolve any potential conflicts of interest, including any that may have been disclosed by your responses to the above items. Please provide three (3) copies of any trust or other relevant agreements.

I don't believe that there are any situations which will present a conflict of interest. If one arises, I will, at a minimum, apprise the parties and, if appropriate, recuse myself from the case.

8. If confirmed, do you expect to serve out your full term?

Yes.

### III. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

Financial Data is maintained on file with the Committee on Governmental Affairs

## IV. DISTRICT OF COLUMBIA REQUIREMENTS

Supplemental questions concerning specific statutory qualifications for service as a judge in the courts of the District of Columbia pursuant to the District of Columbia Court Reform and Criminal Procedure Act of 1970, D.C. Code Section 11-1501(b), as amended.

1. Are you a citizen of the United States?

Yes.

2. Are you a member of the bar of the District of Columbia?

Yes.

3. Have you been a member of the bar of the District of Columbia for at least five (5) years?  
Please provide the date you were admitted to practice in the District of Columbia.

Yes. Admitted March 13, 1979.

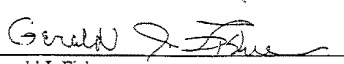
4. If the answer to Question 3 is "no"--



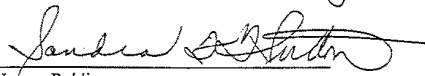
- a. Are you a professor of law in a law school in the District of Columbia?
- b. Are you a lawyer employed in the District of Columbia by the United States or the District of Columbia?
- c. Have you been eligible for membership in the bar of the District of Columbia for at least five (5) years?
- d. Upon what grounds is that eligibility based?
5. Are you a *bona fide* resident of the District of Columbia?
6. Please list the addresses of your actual places of abode (including temporary residences) with dates of occupancy for the last five (5) years.
7. Have you maintained an actual place of abode in such area for at least five (5) years?
8. Are you a member of the District of Columbia Commission on Judicial Disabilities and Tenure or the District of Columbia Judicial Nominating Commission?
9. Have you been a member of either of these Commissions within the last 12 months?

AFFIDAVIT

Gerald I. Fisher being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

  
Gerald I. Fisher

SUBSCRIBED and SWORN TO before me this 17 day of July, 2000.

  
Notary Public  
My Commission Expires September 14, 2000